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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/814,622	03/22/2001	Mark E. Cannon	CANN-0208	3984

7590

10/20/2005

Schmeiser, Olsen & Watts LLP  
18 East University Drive, #101  
Mesa, AZ 85201

EXAMINER
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FLEURANTIN, JEAN B

ART UNIT	PAPER NUMBER
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2162

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/814,622	CANNON, MARK E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JEAN B. FLEURANTIN	2162	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 15-22,96,97 and 118 is/are pending in the application.
- 4a) Of the above claim(s) 12,14,88-95 and 98-117 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-22,96,97 and 118 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This is in response to the restriction requirement filed on 25 July 2005, in which claims 15-22, 96, 97 and 118 have been elected.
2. Claims 15-22, 96, 97 and 118 remain pending for examination.

### ***Drawings***

3. The drawings filed on 22 March 2001 comply with 37 CFR 1.81. It has been placed in the application file.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15, line 3 recites "message recipients". It is not clear as to what "message recipients" the applicant(s) is/(are) referring to. The specification does not enable one having ordinary skill in the art to understand such a "message recipients".

There is no detail provided the specification to help the examiner to understand the scope of the "message recipients" as claimed.

Applicant(s) is/(are) advised to amend the specification or cancel such limitation in the claim. Applicant(s) is/(are) also reminder no new matter should be added.

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***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-22, 96, 97 and 118 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 6,463,585 issued to Hendricks et al., (hereinafter "Hendricks") in view of US Patent No. 5,155,591 issued to Wachob, (hereinafter "Wachob").

As per claim 15, Hendricks discloses "a program product" (see col. 4, lines 29-32) comprising:

"an advertising plan optimization mechanism for generating a plan" (i.e., use the available feeder channels for the programs that yield the largest maximum rank; see col. 39, lines 50-57) "for providing an advertisement message to a selected group of potential message recipients" (i.e., select the advertisement for which a group with a higher value has already been selected (preselected group); see col. 37, line 58 to col. 38, line 60), "the advertising plan optimization mechanism modifying an advertising the message to the preselected group within an advertising schedule" (i.e., select the advertisement for which a group with a higher value has already been selected (preselected group); see col. 38, line 39 to col. 39, line 18) and "evaluating resulting advertising plan to achieve one of an improved and an optimal advertising plan for the message" (i.e., determine the advertisement, targeting category combination that results in the highest overall ranking; see col. 37, lines 13-57).

Hendricks fails to explicitly disclose signal bearing media bearing the advertising optimization mechanism. However, Wachob discloses signal bearing media bearing the advertising optimization mechanism (see Wachob col. 2, lines 24-36).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of Hendricks by incorporating signal bearing media bearing the advertising optimization mechanism as disclosed by Wachob (see col. 9, lines 36-39). One having ordinary skill in the art would have found it motivated to use such a modification in order to provide a method for targeting

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specific commercial advertisements to demographically selected audiences (see Wachob col. 1, lines 25-28).

As per claim 16, in addition to claim 15, Hendricks further discloses "transmission media" (see col. 9, lines 34-46).

As per claim 17, in addition to claim 15, Hendricks further discloses "recordable media" (see col. 28, lines 52-67).

As per claim 18, Hendricks further discloses "a plurality of indices which are utilized by the advertising plan optimization mechanism to iteratively modify the advertising plan" (see col. 20, lines 43-66).

As per claim 19, Hendricks discloses "the plurality of indices comprises at least one of an exposure valuation index" (see col. 21, lines 8-11), "an audience valuation index, an exposure recency index, a response index and a cost index" (see col. 20, lines 44-48).

As per claim 20, Hendricks further discloses "a data conversion mechanism comprising a mechanism for converting data from a first data format to a second data format" (i.e., converted from a waveform (first format) into a digital binary format (second format); see col. 19, lines 1-7).

As per claim 21, Hendricks further discloses "the first data format is a plurality of media exposure records" (see col. 19, lines 1-2) "the second data format is a plurality of variable length records which describe changes in media-related access data for a target audience" (see col. 25, lines 63-65).

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As per claim 22, Hendricks further discloses "the first data format is a plurality of media exposure records" (see col. 19, lines 1-2) and "the second data format is a binary representation of the plurality of media exposure records" (see col. 19, lines 2-4).

As per claim 96, the limitations of claim 96 are rejected in the analysis of claims 15-19, and this claim is rejected on that basis.

As per claim 97, Hendricks discloses "the media exposure records comprise television viewing records produced by A.C. Nielsen" (see col. 35, lines 16-65).

As per claim 118, the limitations of claim 118 are rejected in the analysis of claim 19, and this claim is rejected on that basis.

***Prior Art***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hendricks et al., U.S. Patent No. 5,600,364 relates to a network controller that monitors, controls and manages a television program.

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#### CONTACT INFORMATION

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571-272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jean Bolte Fleurantin  
Patent Examiner  
Technology Center 2100  
October 12, 2005

  
SHAHID ALAM  
PRIMARY EXAMINER